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April 22, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M St., N.W., Room 222
Washington, D.C. 20554

Re: LCI Petition for Expedited Declaratory Rulings, CC Docket No. 98-5

Dear Ms. Salas:

I am enclosing for filing the original and twelve copies of the Reply Comments of LCI International Telecom Corp. in the docket referred to above. Please call me if you have any questions.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for LCI International Telecom Corp.

Enclosures

cc: Janice Myles
ITS, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
LCI International Telecom Corp.	)	CC Docket No. 98-5
Petition for Expedited Declaratory Rulings	)	

REPLY COMMENTS OF LCI INTERNATIONAL TELECOM CORP.

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Dated: April 22, 1998

TABLE OF CONTENTS

SUMMARY

The comments in this proceeding demonstrate that the Commission should promptly grant the three declaratory rulings underlying LCI's "Fast Track" plan. That plan responds to the inherent conflicts of interest arising from an RBOC's ownership of the ubiquitous local network. The plan proposes to separate the RBOC's role as a "carrier's carrier" vendor of this bottleneck network from its role as competitor in the retail market. LCI submits that RBOCs who adopt the Fast Track structure, including the "seven minimums" that ensure adequate separation, should receive (1) a presumption that they meet Section 271 requirements for interLATA entry, (2) non-dominant treatment for services offered by their retail affiliate ("ServeCo"), and (3) relief for ServeCo from the obligations of Section 251(c). These are the declaratory rulings we have requested the Commission to issue here.

The comments demonstrate broad consensus that the RBOC conflicts of interest are infecting and delaying the development of the local exchange competition anticipated by the Telecom Act. The comments also demonstrate widespread agreement that structural separation is the best way to address these conflicts.

RBOCs, not surprisingly, take a different position. However, they view "Fast Track" self-servingly through the prism of Section 271 alone. They disregard that the LCI plan is particularly relevant for the period *after* interLATA entry but

before elimination of the RBOC's bottleneck control of the local network. LCI's plan is designed to create a comprehensive, less regulatory, framework for this period.

The comments here contain many examples of the problems stalling local exchange competition in this country. The comments also warn of the problems that will continue if regulators must continuously oversee RBOC self-dealing in an integrated company to prevent discrimination and other anticompetitive conduct. The micro-regulation necessary today will have to continue indefinitely, with regulators forced to scrutinize everything from pricing to how fast repair trucks are dispatched. It is understandable that NARUC passed a resolution in favor of studying the Fast Track alternative, and that state commissions like Illinois and Oklahoma are beginning to do so in their own proceedings.

RBOCs raise several legal objections to the Fast Track rulings, none of which have merit. For example, they allege that the plan expands the Section 271 checklist. The short answer is that Fast Track is a voluntary structure, and that LCI is only asking the Commission here to rule on how it would treat an RBOC who adopted this structure (just as the RBOCs are seeking certainty on other Section 271 matters). The rulings in no way preclude alternative factual showings in support of interLATA entry. The RBOCs also allege that Fast Track interferes with state jurisdiction. Again this is wrong, for Fast Track contemplates on its face that states will play a crucial role.

In contrast, some competitors and consumers express concern that the presumption of Section 271 compliance would undermine the Act by narrowing the RBOC's obligations to meet the checklist. This concern is misplaced; the presumption we request is only that. RBOCs will not be granted interLATA authority unless they can meet the terms of the Act. But the Commission should recognize that an RBOC adopting the Fast Track structure, and thereby agreeing to interface with its network affiliate ("NetCo") on the same terms as other CLECs, is likely to be meeting the checklist requirements that primarily are designed to ensure such equivalency.

RBOCs also raise other objections to Fast Track, none of which are reasons for deferring the declaratory rulings requested here. For example, some present exaggerated assertions regarding the administrative and other costs of separation. They disregard that they already are establishing separate affiliates for interLATA service. They also disregard the willingness of some RBOCs to establish separate "CLECs" in an attempt to self-deregulate some of their retail activity. It remains to be seen whether an RBOC will pursue the Fast Track structure once this option is made available through these declaratory rulings -- and once regulators have made clear to the RBOC the kind of ongoing regulation of RBOC activity that otherwise would be necessary to prevent discrimination if the RBOC leaves its network and retail operations integrated. However, history demonstrates that AT&T and the RBOCs have been willing to separate and even divest business units

to reduce conflicts of interest. They should have the same option clarified for them here.

RBOCs also raise other red herrings to discourage consideration of structural separation. They allege that separation will discourage network investment. The short answer is that the Fast Track structure should increase investment incentives -- for both the NetCo and the ServeCo. RBOCs raise the specter of universal service and historic cost issues. But these matters are present with or without separation. In fact, the Fast Track structure makes them easier to deal with on a competitively neutral basis. The RBOCs allege that separation deters facilities investment, but this is also wrong. ServeCo will have the same need for new facilities as other CLECs (as well as the same interest in efficient access to NetCo plant so that inefficient investments are not made). It is true that separation does not eliminate the incentives of NetCo and the RBOC to establish barriers to facilities deployment through discrimination and cross-subsidization, but these problems are not made worse by RBOC separation. If anything regulators will be better positioned to devote their scarce resources to this problem, and not to micro-regulating the way that the RBOC deals with its own and competing retail operations.

Many parties suggest that the Fast Track plan does not go far enough, and that RBOCs should be required to fully divest their network operations from their retail activities. LCI would prefer a stronger approach to the RBOC conflicts of interest, but we also want to break the current stalemate as quickly as possible.

Grant of the declaratory rulings set forth here will not preclude consideration of other remedies in the future. Meanwhile, however, the comments reinforce the advantages of approving the Fast Track rulings now so that further consideration of this approach by the RBOCs and state commissions can occur with the benefit of this certainty.

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REPLY COMMENTS OF LCI INTERNATIONAL TELECOM CORP.

LCI International Telecom Corp. ("LCI"), by its counsel, respectfully submits these reply comments in support of its Petition for Expedited Declaratory Rulings. 1/

INTRODUCTION

A. The Comments Confirm that the Comprehensive "Fast Track" Option Is Needed Both Before and After Section 271 Entry.

LCI is gratified by the support in the comments for action to address core structural barriers that are denying consumers competitive choices in local telephone service. The comments reinforce why the Commission should grant the three declaratory rulings underlying LCI's "Fast Track" plan, and do so as soon as possible. Commenters recognize that this comprehensive structure can advance the

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1/ *See* Public Notice, DA 98-130 (released Jan. 26, 1998) (establishing comment cycle); Order, DA 98-339 (released Feb. 20, 1998) (modifying comment dates).

goals of the Telecommunications Act of 1996 (the "1996 Act"). Some argue that the plan does not go far enough, and argue for more complete divestiture. But as discussed in detail below, the rulings requested here do not limit the ability of the Commission or the states to pursue alternative paths. Meanwhile, however, the record confirms that the Commission should do its part to make the Fast Track option available now.

The Regional Bell Operating Companies ("RBOCs") predictably take a different approach. However, they self-servingly tend to view the petition solely through the prism of Section 271. They then allege that the petition "expands the checklist" or is unnecessary. These arguments are wrong as a legal matter. 2/ But more importantly, the RBOCs disregard the extent to which their operations will require stringent regulation after interLATA entry in the absence of adequate structural separation to prevent continuing discrimination.

Put another way, LCI's Petition is not merely about creating a "Fast Track" to interLATA authority for the RBOCs, though that would be one result. We are proposing a "Fast Track" to wide-spread, sustainable, competitive choices for all Americans, including both residential and business consumers. In this context, the Fast Track plan is particularly important for the period *after* interLATA entry. LCI designed its plan to create an overall framework for a more competitive, less regulatory, telecommunications market for the next decade, or however long the

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2/ *See* Section II, *infra*.

RBOCs continue to control the one ubiquitous wireline network upon which all service providers depend.

The comments here underscore why the Commission should promptly grant the declaratory rulings necessary to implement LCI's Fast Track plan. There is broad consensus that RBOCs face a deep-rooted conflict of interest, and that structural approaches such as the LCI plan are needed to address this problem. The conflict is inherent in the RBOCs' dual role as both a retail service company and as the supplier of bottleneck network inputs required by all their retail competitors. Put simply, to the extent an RBOC provides other carriers with efficient use of its local network on a "carrier's carrier" basis, the RBOC enables those parties to win away the RBOC's own retail customers. It is no wonder that RBOCs have not acted like normal network vendors in a competitive market, making their facilities easy to use and interconnect with. The RBOCs instead have resisted cooperation with their would-be competitors, and forced regulators into the role of micromanaging Section 251 compliance in a never-ending attempt to identify and eliminate anticompetitive discrimination. And it is no wonder that commenters particularly fear the period after interLATA entry, when the Section 271 carrot is gone. At that point federal and state regulators still will be required to oversee RBOC actions and services closely to ensure that these firms are not favoring themselves in the price and availability of network elements, the speed with which customers are connected, priority in maintenance and repair of network

components -- and all of the thousands of other ways that the RBOC can use its bottleneck network position to favor itself.

"Fast Track" addresses these problems through a structure that both expedites competition and, importantly, offers RBOCs the opportunity to compete in retail markets on the same terms as CLECs. And because the plan would be voluntary, the Commission can create this pro-competitive avenue quickly -- and without prejudice to other approaches that would require much greater ongoing regulatory oversight.

In that regard, LCI emphasizes that grant of its Petition in no way precludes alternative means of creating local competition, satisfying Section 271, and preserving that competition after Section 271 entry. LCI is well aware that frustration with the current stalemate is leading others to consider how the logjam might be broken. For example, the Chairman of the New York Public Service Commission recently announced that Bell Atlantic had offered a set of commitments and conditions that, if satisfied, would in his view justify interLATA entry. 3/ Other states similarly are embroiled in consideration of how they might break the current stalemate, including exploration in some states of structural approaches, and LCI is participating in this process. LCI believes that Bell Atlantic-New York's approach is unlawful and cannot form the basis of a successful Section 271 application,

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3/ *PSC Chairman Supports Conditions for Bell Atlantic's Entry into Long Distance and Irreversible Opening of the Local Telephone Market,* Press Release and Letter from Former Chairman John F. O'Mara, April 6, 1998 (available on the Internet at http://www.dps.state.ny.us/).

because, among other things, it denies competing carriers certain elements to which they are entitled under Section 251 and is discriminatory in design and effect. But this is not the place to address the specifics of those defects. 4/

For present purposes, the important point is that while grant of the declaratory rulings requested by LCI would open one large door to competition for consumers, it would not foreclose other avenues to accomplish the same end. Thus, RBOCs still may pursue other paths to demonstrate satisfaction of the Section 271 criteria. In doing so, however, they will not enjoy the presumption permitted by the Fast Track plan because they will not have separated their network and retail operations in a manner that addresses the conflicts of interest discussed above. Similarly, RBOCs may continue to integrate their local network and retail operations after Section 271 entry. But if they choose this course, they must expect to face stringent regulation of both their "carrier's carrier" and retail operations as both the FCC and state commissions monitor and attempt to prevent anticompetitive discrimination.

In these reply comments, we show that the Fast Track plan advances the public interest by promoting local competition, facilitating deregulation, and advancing the interests of consumers. We also show below that the Fast Track plan is well within the Commission's legal authority, and is fully consistent with the Commission's policy objectives of promoting facilities deployment and universal

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4/ *See infra* note 17.

service. The Commission should grant the requested declaratory rulings expeditiously.

B. The Fast Track Plan in Brief.

In its Petition LCI set forth its Fast Track plan in comprehensive detail. We explained the necessary features of the plan, including the "seven minimums" -- the seven key safeguards that reduced the incentives and ability of the RBOCs to act on their conflicts of interest through discrimination against other local service providers. We also explained in detail how the Fast Track plan would be implemented, including the features that ensured a prompt transition to pure separation of network and retail operations, with a minimum of customer disruption.

LCI will not repeat the details of the Fast Track plan. However, for the convenience of the reader, we summarize its key components here:

1. NetCo/ServeCo Separation

- An RBOC holding company ("HoldCo") may opt to create a two-part corporate structure consisting of two distinct subsidiaries: (1) the network operator ("NetCo"), which will offer the use of its network facilities to all carriers, including its affiliate as well as competitive local exchange carriers ("CLECs"), on identical terms and conditions; and (2) the retail affiliate ("ServeCo"), which would offer retail local and long distance services on the same, largely unregulated, basis as its competitors.

- An RBOC that opts for the Fast Track approach must satisfy seven minimum elements:

  (1) NetCo and ServeCo will not share facilities, functions, services, employees, or brand names;

  (2) NetCo will not engage in retail marketing, and will continue to serve its existing customer base on a transitional basis until those

customers are won by ServeCo or other competitors;

(3) NetCo will offer ServeCo access to its network that is identical to the form of access used by other competitors;

(4) ServeCo will have substantial public ownership (40% or more);

(5) The ServeCo board will include independent directors, including representatives of the non-HoldCo shareholders;

(6) ServeCo management will receive compensation based only on ServeCo's performance, not that of HoldCo or NetCo; and

(7) ServeCo may provide customers both local and long-distance service, but may not provide "stand-alone" long-distance service (without providing local service) to a NetCo local customer until customers can be switched among competing local providers as easily as they are switched among long-distance companies today. At that point, a state commission could decide to require balloting and allocation of NetCo's remaining customer base.

2. Declaratory Rulings Requested

LCI has requested that the Commission grant three declaratory rulings that, collectively, lay the groundwork for an RBOC to adopt the Fast Track structure (in coordination with the relevant state utility commission) and thereby obtain the benefits warranted by such separation. Specifically, LCI has requested that the Commission rule that, if an RBOC separates its carrier's carrier network operations from its retail operations in a manner that satisfies each of the seven minimum elements described above:

- The RBOC will receive a rebuttable presumption that the Section 271 competitive checklist and public interest test are satisfied;
- ServeCo will be treated as a non-dominant carrier; and
- ServeCo will not be subject to the interconnection and related obligations of an incumbent local exchange carrier ("ILEC") under Sections 251(c) and 251(h) of the Act.

C. The Commission Should Act Promptly to Grant These Declaratory Rulings.

Again, LCI is not asking the Commission to mandate that an RBOC adopt the Fast Track structure. We are only asking the Commission to grant these rulings and to do so promptly, so that this avenue is available to any RBOC that chooses to break the current stalemate through a structural approach. The Commission should go forward and grant the rulings requested by LCI now so that state utility commissions, the RBOCs, and other parties can consider the Fast Track plan as they look to options for the future.

Here too, we would emphasize the advantages of the Fast Track structure for the period *after* RBOCs receive interLATA authority. Relatively little consideration has yet been given as to how RBOC operations should be regulated in a post-Section 271 environment. In particular, regulators need to rethink these matters in light of the discouraging experience of the past two years, including the massive resistance of the RBOCs to Section 251 compliance even with the interLATA carrot ahead of them. To the extent that interLATA entry is on the horizon, it will become necessary for regulators to decide how they will promote and preserve competition in the future.

Some RBOCs may believe that their integrated network and retail operations will be supervised lightly if at all, such that it will be difficult for regulators to identify and punish anticompetitive discrimination and similar conduct. However, LCI is certain that the states and the FCC cannot and will not walk away from their responsibilities after Section 271 entry. So long as an RBOC

controls the dominant wireline network, and therefore controls the fate of its retail service rivals, regulators will be required to address resulting market problems.

The Fast Track plan is one means of doing so with a minimum of retail regulation, putting the RBOC ServeCo and other CLECs on the same footing to the maximum extent possible. By granting the declaratory rulings requested here, the Commission can establish an option for RBOCs who want reduced interstate regulation for interexchange and access services, so long as RBOCs are willing to offer those services through ServeCo. The Commission also can do its part to coordinate with states who are considering structural approaches to address competitive issues in their jurisdiction. If interLATA entry is to occur soon, then favorable action on the declaratory rulings requested here is all the more necessary.

In the sections below we address more specifically the comments of the various parties in this docket. We demonstrate that the Fast Track plan is lawful, that it improves consumer welfare, and that it simplifies the Commission's task in dealing with residual issues like facilities competition to NetCo and universal service. This path out of the current stalemate should be made available as soon as possible.

I. THE RECORD CONTAINS BROAD SUPPORT FOR CONSIDERATION OF STRUCTURAL TOOLS TO ADDRESS RBOC CONFLICTS OF INTEREST.

A. Competitors Agree that LCI has Identified the Key Barriers to Implementation of the 1996 Act.

In its Petition LCI explained why conflicts of interest between the RBOC's role as "carrier's carrier" network company and retail services company are

causing the current stalemate in telecommunications. These conflicts lie at the root of problems in the key areas of pricing, OSS and network element availability. More generally, they are a virus that infect every other aspect of the RBOCs' role as supplier of the bottleneck wireline network under Section 251. 5/

This conclusion is strongly supported by all of the parties who are involved in the difficult task of bringing competition to this monopoly industry segment. Drawing on over two years of experience under the 1996 Act, they repeatedly echo the problems noted by LCI and agree that the RBOC conflict of interest lies at its root. For example:

1. There is broad consensus that local competition is developing much more slowly today than it should, due largely to ILEC intransigence in cooperating with the pro-competitive mandates of the 1996 Act. 6/ For example, CompTel states: "The development of local competition is stalled, due to the BOCs' refusal to provide wholesale services in the manner, and at the prices, necessary to enable meaningful, broad-based competition. The three principal impediments to competition – all identified by LCI – are clear." 7/

2. There is a broad consensus that the inherent conflict of interest between the ILECs' role as suppliers of bottleneck network facilities and their role

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5/ *See* LCI Petition at Section I.

6/ *See, e.g.*, Ad Hoc Comments at 6-7; AT&T Comments at 2, 5; Cable & Wireless Comments at 3-4; CompTel Comments at 5-13; CPI Comments at 4-6; Excel Comments at 2-4; TRA Comments at 4-6.

7/ CompTel Comments at 6-7.

as retail competitors is largely responsible for this intransigence. 8/ Among others, AT&T asserts: "AT&T also agrees with LCI that the ILECs' actions have been driven by their mixed incentives, and that such conflicts have prevented -- and continue to prevent -- the emergence of effective local competition. Thus, AT&T applauds LCI's efforts to explore possible 'out-of-the-box' solutions to the real-world competitive problems that CLECs face, and it urges the Commission to consider this and other innovative proposals that might further the fundamental goal of the Telecommunications Act of 1996: the development of local competition." 9/

3. There is broad consensus that structural separation between the network and retail functions, with the RBOC retail affiliates purchasing access to network facilities in exactly the same way as their competitors, could be a powerful tool to solve this incentive problem. 10/ The Ad Hoc Telecommunications Users Committee, for example, contends: "LCI's 'fast track' approach, along with other incentives that the Commission can create, could contribute substantially to more competition in the local exchange and access service market. Without a new approach, such as that suggested by LCI, the prospects for widespread effective and

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8/ *See, e.g.*, Ad Hoc Comments at 2-5; AT&T Comments at 5; Cable & Wireless Comments at 4-5; CompTel Comments at 13-15; Fibernet Comments at 2; Level 3 Comments at 5-7; TRA Comments at 17-19; WorldCom Comments at 4-5.

9/ AT&T Comments at 5.

10/ *See, e.g.*, AT&T Comments at 10-11; Cable & Wireless Comments at 6-7; CompTel Comments at 15-17; Excel Comments at 6-7; ICG Comments at 4; Level 3

lasting competition in the local exchange and access service market -- competition that would serve all consumers -- are bleak." 11/

Indeed, the principal complaint from consumer advocates, CLECs, and IXCs is that LCI's Petition does not go far enough in the structural relief it requests. Several of these parties urge consideration of complete divestiture of RBOC network operations or similar remedies. As LCI discusses elsewhere in these comments, it is not opposed to consideration of other approaches to breaking the current stalemate. However, we strongly believe that issuance of the three declaratory rulings requested here is a simple step that the Commission can take now that can significantly advance competition.

Conversely, in their comments opposing the LCI declaratory ruling requests, the RBOCs predictably attempt to minimize the need for a structural alternative by alleging that significant local competition is developing. The RBOCs contend, for example, that they are developing workable OSS and are providing network elements in a fully compliant manner. 12/ They also contend that local competition is developing rapidly, and that it is the reluctance of competitors, and not the RBOCs' own recalcitrance, that is responsible for the slow development of local competition. 13/

11/ Ad Hoc Comments at ii.

12/ *See, e.g.*, Ameritech Comments at 19; SBC Comments at 17-23.

13/ *See, e.g.*, Ameritech Comments at 3-6; Bell Atlantic Comments at 2-4; BellSouth Comments at 11.

These statements are belied not only by the comments in this proceeding -- which almost uniformly challenge the RBOCs' assertions -- but also by the mountains of evidence before the FCC and the state commissions showing that Section 251 is not yet working and that broad-based local competition is far from becoming a reality. For example:

- The Commission has rejected all four Section 271 applications filed to date as substantially short of meeting the basic requirements of Section 271. 14/
- The RBOCs' and other ILECs' own responses to a recent data request from the Common Carrier Bureau reveal that local competitors are not serving more than a small proportion of local exchange lines or minutes in virtually any ILEC service area in the country -- and that no more than a minuscule number of lines are being provided by CLECs using UNEs. 15/

14/ *Application of BellSouth Corporation, et. al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-region, InterLATA Services in Louisiana*, CC Docket No. 97-231, FCC 98-17 (rel. Feb. 4, 1998); *Application of BellSouth Corp. et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-region, InterLATA Services in South Carolina*, CC Docket No. 97-208, FCC 97-418 (rel. Dec. 24, 1997) ("*BellSouth South Carolina Order*"); *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, 12 FCC Rcd 8685 (1997), *aff'd sub nom. SBC Communications, Inc. v. FCC*, No. 97-1425, 1998 WL 121492 (D.C. Cir. Mar. 20, 1998); *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, FCC 97-298 (rel. August 19, 1997) ("*Ameritech Michigan Order*").

15/ *See* "Responses to CCB Survey on the State of Local Competition," available at http://www.fcc.gov/ccb/local_competition/survey/responses/ (assembling data submitted on Feb. 20, 1998). Note that significant data were redacted from the public versions to shield information regarding individual CLECs, and as a consequence, it is impossible for national or regional summaries to be computed based on the public versions. *See also* Bear Sterns, *CLEC Weekly* at 6 (April 20, 1998) (data on access lines served by CLECs).

- Not a single ILEC has yet developed OSS that fully complies with the Commission's rules -- even though the Commission has held that OSS is critical and indispensable for the provision of UNEs and ordered compliance long ago. 16/

- The ILECs have refused to offer UNEs in existing combinations, as which many prospective CLECs seek to purchase them, instead insisting on cumbersome and prohibitively expensive methods that CLECs must use to combine elements. 17/

- As the Commission's counsel has observed, the uncertainty caused by ILEC challenges to the FCC's local competition rules "is a principal reason why local exchange monopolists still receive approximately 98% of the $100 billion in annual revenues generated by the provision of exchange access and local exchange services." 18/

In these circumstances, the RBOC assertions that they have incentives to foster competition ring hollow indeed. The Commission should put these self-serving

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16/ *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance,* Notice of Proposed Rulemaking, CC Docket No. 98-56, FCC 98-72 (released Apr. 17, 1998) at ¶¶ 10, 13; *BellSouth Louisiana Order,* ¶¶ 20-21; *BellSouth South Carolina Order,* ¶¶ 101-69; *Ameritech Michigan Order,* ¶¶ 157-204; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 11 FCC Rcd 15499,15763-64, ¶ 518 (1996), *Vacated in part sub nom. Iowa Util. Bd. v. FCC.,* 120 F.3d 753 (8th Cir. 1997), *cert. granted.*

17/ While it is true that Bell Atlantic has offered to make a number of commitments respecting network element combinations in connection with its Section 271 application in New York, those commitments fall short of complying with the Act's requirements regarding network elements and its nondiscrimination requirements. *See Prefiling Statement of Bell Atlantic - New York,* filed April 6, 1998, in NY PSC Case No. 97-C-0271. As noted above, LCI strenuously opposes Bell Atlantic's New York proposal because it is unlawful and fails to satisfy Section 271. It is noteworthy, moreover, that Bell Atlantic's performance commitments constitute an implicit admission that it still has not fully satisfied the checklist requirements, over two years after the enactment of the 1996 Act and 14 months after it initially filed its application in New York.

18/ *FCC v. Iowa Utilities Board,* No. 97-831, FCC & DOJ Petition for a Writ of Certiorari (U.S. Supreme Court, filed Nov. 1997), at 24.

statements aside, and focus on what common sense and actual experience demonstrate -- the inherent RBOC conflicts of interest are creating obstacles to competition, and structural approaches to address those conflicts should be available as an alternative to the current regulatory and competitive logjam.

B. States Are Interested in Considering Structural Solutions to the Current Stalemate.

LCI designed the Fast Track plan carefully to be respectful of the central role that states will play in the development of local telephone competition. We recognize in the Petition that, in addition to FCC action here, individual states will need to participate in actual implementation of a Fast Track structure. We observed that states may do so either through action mandating RBOC separation, or through procedures that, as here, offer RBOCs reduced retail regulation where the RBOC separates retail operations voluntarily pursuant to the "seven minimums" of the Fast Track Plan.

Since filing the Petition we have met with representatives of many state commissions, and have been gratified by the interest that our proposal has provoked. State regulators can see the quagmire caused by RBOC conflicts of interest for themselves. They do not want to engage in detailed micromanagement of RBOC dealings with competitors, either now or for the next decade while RBOCs remain the bottleneck wireline network. Yet they can foresee the disputes that will be ahead of them so long as the RBOC has both the incentive and the ability to discriminate in favor of itself. They do not want to spend the next ten years listening to complaints about RBOC pricing, or about unequal interconnection, or

about OSS deficiencies, or for that matter whether the RBOCs are sending repair trucks to their own customers first. State commissioners and staff are interested in considering structural approaches that can reduce the need for such oversight and permit retail markets to proceed more freely.

This interest is reflected in the comments here. Most notably, the National Association of Regulatory Utility Commissions (NARUC) filed a resolution adopted at its winter meetings in February supporting serious consideration of the plan so that the Fast Track option would be available to states that want to implement it. 19/ The NARUC position is entirely consistent with LCI's request here that the declaratory rulings be granted quickly. By doing so, the Commission will do its part to set the stage for states to implement the plan in their jurisdictions.

This process already has begun, even though the LCI plan only has been in the public eye for three months. For example, the Illinois Commerce Commission has initiated a formal proceeding to consider the LCI Fast Track plan. A copy of the Illinois Commission's recent order detailing the issues to be addressed in the proceeding is attached to these comments, and shows how seriously that state is taking this issue. 20/ The Oklahoma Corporation Commission similarly has

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19/ *See* NARUC Comments.

20/ *Notice Of Inquiry Concerning The Structural Separation Of Ameritech Illinois*, 98-NOI-1 (Ill. Commerce Comm'n, April 15, 1998); *Notice of Inquiry Concerning the Separation of Illinois Bell Tel. Co.'s Retail Operations from its Monopoly Network Operations as a Means of Expediting Local Competitive Entry*, Resolution, Ill. Commerce Comm'n, Feb. 18, 1998).